



**Filed: 3/12/2008**

09500HB5125ham001

LRB095 16510 DRJ 47947 a

1 AMENDMENT TO HOUSE BILL 5125

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 5125 by replacing  
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the  
5 Immigrant Family Preservation Act.

6 Section 5. Purpose. The purpose of this Act is to protect  
7 the foreign national minors or minors holding dual nationality  
8 throughout the United States, in particular the State of  
9 Illinois. The General Assembly recognizes that foreign  
10 national minors and minors holding dual nationality are  
11 essential to the maintenance of the culture, traditions, and  
12 values of their country of nationality. Therefore, this Act  
13 provides a method of early identification of foreign national  
14 minors and minors holding dual nationality and their families  
15 in order to provide services that ensure all the protections  
16 afforded by the Vienna Convention and all other applicable

1 treaties and laws.

2 The General Assembly recognizes that the governments of  
3 foreign countries have a duty to care for the interests of  
4 their citizens and nationals abroad, particularly those of  
5 minors, as expressed in Article 5, Secs. (a) and (h), of the  
6 Vienna Convention. The General Assembly also recognizes that it  
7 is imperative that foreign consulates be notified, without  
8 delay, of guardianship as expressed by the Vienna Convention,  
9 Article 37(b). The General Assembly further recognizes that  
10 governments of foreign countries have a right to information  
11 and access in all cases involving minors who are foreign  
12 national minors and minors holding dual nationality.

13 The further purpose of this Act is to ensure compliance  
14 with the Vienna Convention. The Vienna Convention provides for  
15 consular notification and access in cases in which foreign  
16 nationals are involved in legal proceedings. The Convention  
17 places a special responsibility on the receiving state's  
18 authorities, in this case, the Director of the Department, to  
19 treat cases of foreign national minors and minors holding dual  
20 nationality with particular care. The General Assembly  
21 recognizes that the notification of consular authorities is  
22 essential in these cases, not only because a legally binding  
23 treaty dictates it, but also because foreign consulates provide  
24 essential services that can mutually assist both the Department  
25 and the consulates, as well as the individuals personally  
26 affected.

1 Section 10. Definitions. In this Act:

2 "Agency" means the agency in a foreign country charged with  
3 ensuring the welfare of minors who are nationals of that  
4 country or who hold dual nationality in that country and the  
5 United States.

6 "Custodian" means the nonparental caretaker of a foreign  
7 national minor or minor holding dual nationality who has been  
8 entrusted by the parent of the minor with the day-to-day care  
9 of the minor.

10 "Department" means the Department of Children and Family  
11 Services.

12 "Foreign national minor" means an unmarried person who is  
13 under the age of eighteen years, was born in a country other  
14 than the United States, and has not acquired United States  
15 citizenship as the biological child of a United States citizen.

16 "Minor holding dual nationality" means an unmarried person  
17 who is under the age of eighteen years, bears United States  
18 citizenship, and is eligible for nationality in another country  
19 as the biological child of a parent who is national of that  
20 country.

21 "Vienna Convention" means the Vienna Convention on  
22 Consular Relations, 21 U.S.T. 77, T.I.A.S. No. 6820.

23 Section 15. Inquiry. The Department shall inquire, at the  
24 time a decision to take protective custody of a minor is made,

1 whether the minor is a foreign national minor or minor holding  
2 dual nationality. The Department shall provide to any such  
3 minor, and any parent or custodian of such minor, information,  
4 in English and the minor's native language, explaining the  
5 protective custody process and the rights of the minor and his  
6 or her parents or custodian, including those rights afforded  
7 under the Vienna Convention, and the address and telephone  
8 number of the nearest consulate serving the minor. If the  
9 Department learns at a later time that the minor is a foreign  
10 national minor or minor holding dual nationality, then the  
11 information shall be forwarded to the appropriate parties as  
12 determined under this Act.

13 Section 20. Notification.

14 (a) The Department shall promulgate rules under which it  
15 would notify the appropriate consulate in writing in a timely  
16 manner after:

17 (1) the initial date the Department takes custody of a  
18 foreign national minor or a minor holding dual nationality  
19 or the date the Department learns that a minor in its  
20 custody is a foreign national minor or a minor holding dual  
21 nationality, whichever occurs first;

22 (2) the parent of a foreign national minor or a minor  
23 holding dual nationality has requested that the consulate  
24 be notified; or

25 (3) the Department determines that a noncustodial

1 parent of a foreign national minor or a minor holding dual  
2 nationality in its custody resides in the country  
3 represented by the consulate.

4 (b) The Department shall provide the consulate with the  
5 name and date of birth of the foreign national minor or the  
6 minor holding dual nationality, the name of his or her parent  
7 or custodian, and the name and telephone number of the  
8 departmental caseworker directly responsible for the case.

9 (c) If the consulate needs additional specific information  
10 regarding the case of the foreign national minor or the minor  
11 holding dual nationality, the consulate may contact the  
12 Department's Division of Guardian and Advocacy or the  
13 Division's designee, and the Department may release any  
14 information not required to be kept confidential under federal  
15 or Illinois law.

16 Section 25. Confidentiality; further information.

17 (a) Disclosure of information under this Act is subject to  
18 the same requirements of confidentiality as the disclosure of  
19 information under the Juvenile Court Act of 1987 and the Abused  
20 and Neglected Child Reporting Act.

21 (b) In order to respond to a consulate's need for specific  
22 information regarding the cases of foreign national minors and  
23 minors holding dual nationality, the Department shall  
24 designate Department personnel who are responsible for  
25 responding to requests from foreign consulates for such

1 information.

2 Section 30. Interview of minor by consular representative.  
3 Any foreign national minor or minor holding dual nationality in  
4 the custody of the Department may be interviewed by a  
5 representative of the consulate of the country of the child's  
6 nationality. In the case of a minor holding dual nationality,  
7 the Department's Guardianship Administrator or his or her  
8 designee must consent to the interview. In order to arrange for  
9 such an interview, the consulate shall contact the Department's  
10 Division of Guardian and Advocacy or the Division's designee.

11 Section 35. Special Immigrant Juvenile Status. In cases in  
12 which a foreign national minor has been placed as a ward of the  
13 State of Illinois and has become eligible for Special Immigrant  
14 Juvenile Status (SIJS) pursuant to 8 U.S.C. 101(a)(27)(J)(ii),  
15 the Department may seek the assistance of the consulate of the  
16 country of the child's nationality in obtaining the necessary  
17 documentation from that country for completion of the SIJS  
18 application.

19 Section 40. Proof of nationality. The Department's  
20 Division of Guardian and Advocacy may obtain a birth  
21 certificate from the appropriate country for a foreign national  
22 minor or a minor holding dual nationality in the custody of the  
23 Department. The Department may request the assistance of the

1 consulate in obtaining the necessary documentation to complete  
2 the application for a birth certificate under this Section.

3 Section 45. DCFS assistance to foreign child welfare  
4 agencies.

5 (a) Upon notification to a consulate pursuant to Section 20  
6 of this Act, the Department may request that the consulate  
7 obtain through the agency the appropriate home studies of  
8 potential families in such country who may be involved in the  
9 case and forward the information to the departmental caseworker  
10 directly responsible for the case.

11 (b) When a foreign national minor is placed in his or her  
12 country or a minor holding dual nationality is placed in the  
13 country other than the United States in which he or she holds  
14 nationality, the Department shall take all steps necessary to  
15 obtain the cooperation of the consulate and the agency to  
16 ensure the minor's welfare and provide whatever services are  
17 needed. The Department shall request copies of the monitoring  
18 reports prepared by the agency concerning the welfare of the  
19 minor and shall ensure that such information is delivered to  
20 the Department caseworker directly responsible for the case of  
21 the minor.

22 Section 50. Witnesses. The Department may request the  
23 cooperation of the appropriate consulate to locate individuals  
24 who reside in a foreign country and are required to appear in

1 an Illinois court in connection with cases involving a foreign  
2 national minor or a minor holding dual nationality, in order to  
3 properly notify such individuals of court appearances.

4 Section 55. Ongoing communication. Department staff shall  
5 meet as needed with consular officers in order to discuss,  
6 clarify, and coordinate activities in areas of mutual interest  
7 and concern. The Department may participate with the consulates  
8 in joint prevention efforts regarding the protection and  
9 well-being of foreign national minors and minors holding dual  
10 nationality and their families. In addition, the Department's  
11 Division of Communications shall make every effort to exchange  
12 with the consulates ideas and concerns of a high profile nature  
13 that may result in media attention, in a timely manner. The  
14 consulates may contact the Department's Division of Guardian  
15 and Advocacy, Advocacy Office for Children and Families, or  
16 Office of Inspector General at any time, however,  
17 notwithstanding any other provision of this Act.

18 Section 60. Immunity. Except as otherwise expressly  
19 provided in this Act, nothing in this Act shall be construed as  
20 a waiver of immunities to which a consulate and its consular  
21 agents are entitled to under international law, the Foreign  
22 Sovereign Immunities Act of 1976, 28 U.S.C. 1602 et seq., and  
23 international treaties in force between the United States and  
24 foreign countries. Except as otherwise expressly provided in

1 this Act, this Act shall not imply or confer a submission by  
2 any foreign country or its consular agents to the jurisdiction  
3 of any United States or Illinois courts.

4 Section 65. No authority to make or promulgate rules.  
5 Notwithstanding any other rulemaking authority that may exist,  
6 neither the Governor nor any agency or agency head under the  
7 jurisdiction of the Governor has any authority to make or  
8 promulgate rules to implement or enforce the provisions of this  
9 Act. If, however, the Governor believes that rules are  
10 necessary to implement or enforce the provisions of this Act,  
11 the Governor may suggest rules to the General Assembly by  
12 filing them with the Clerk of the House and Secretary of the  
13 Senate and by requesting that the General Assembly authorize  
14 such rulemaking by law, enact those suggested rules into law,  
15 or take any other appropriate action in the General Assembly's  
16 discretion. Nothing contained in this Act shall be interpreted  
17 to grant rulemaking authority under any other Illinois statute  
18 where such authority is not otherwise explicitly given. For the  
19 purposes of this Act, "rules" is given the meaning contained in  
20 Section 1-70 of the Illinois Administrative Procedure Act, and  
21 "agency" and "agency head" are given the meanings contained in  
22 Sections 1-20 and 1-25 of the Illinois Administrative Procedure  
23 Act to the extent that such definitions apply to agencies or  
24 agency heads under the jurisdiction of the Governor."